hoped that the American courts, in which this situation has apparently never arisen, will not follow this illogical rule.

SCHOOLS AND SCHOOL DISTRICTS — DIPLOMA — MANDAMUS FOR DIPLOMA FOR UNQUALIFIED STUDENT ALLOWED TO TAKE PART IN GRADUATION EXERCISES. — Although the plaintiff had not qualified for graduation, the school board, in order to save his parents from humiliation, allowed him to take part in the graduation exercises, for which he bought a class button and the class flower. The real diplomas had not yet come from the printer, and he with the others was given a dummy diploma. Later the school board refused to give him a real diploma, and he demands a mandamus to compel them to. *Held*, that he is not entitled to his writ. *Sweitzer* v. *Fisher*, 154 N. W. 465 (Ia.).

If a student's record has been determined to be satisfactory, and the duty of giving a degree has become ministerial, he is entitled to a mandamus to compel the school board to graduate him. *Keller* v. *Hewitt*, 109 Cal. 146, 41 Pac. 871; *State* v. *Lincoln Medical College*, 81 Neb. 533, 116 N. W. 294. *Cf. People* v. *Bellevue Hospital Medical College*, 60 Hun 107, 14 N. Y. Supp. 490. But the determination of his record is for the school board and a mandamus will not issue to control the exercise of so discretionary a power. *People* v. *New York Law School*, 68 Hun 118, 22 N. Y. Supp. 663; *People* v. *New York, etc. College*, 20 N. Y. Supp. 379; *Niles* v. *Orange Training School*, 63 N. J. L. 528, 42 Atl. 846. As the plaintiff's record, in the principal case, had in fact been determined to be unsatisfactory, his claim can only be supported on the ground that the school board, after allowing him to participate in the forms of graduation and to incur expense thereby, cannot now be heard to say that he was unqualified to do so. However, as there is a public interest in having degrees represent a certain standard of attainment, it is submitted that not by estoppel, nor even by express contract, should a school board be able to bind itself to issue a degree to an unqualified student, or be bound by a degree so issued. See *City of Joliet* v. *Werner*, 166 Ill. 34, 41, 46 N. E. 780, 782. There is a further ground for the decision in the feasibility of an appeal to the county superintendent, for mandamus is essentially an extraordinary remedy. *Marshall* v. *Sloan*, 35 Ia. 445; *Stockton* v. *Board of Education*, 72 N. J. L. 80, 59 Atl. 1061.

SURETYSHIP — SURETY'S DEFENSES — WHETHER AFFECTED BY RISE OF SURETYSHIP AS BUSINESS UNDERTAKING. — The defendant surety company became surety on a bond for a contractor, who promised to pay for all materials used by him. The plaintiff, who furnished materials, accepted from the contractor short-time notes and renewals of them. On the contractor's failure to pay the notes, the plaintiff sued the surety company on the bond. *Held*, that the defendant is liable. *People* v. *Traves*, 154 N. W. 130 (Mich.).

A corporation obtained a loan from the plaintiff, and gave as security a warehouse receipt for goods worth more than the amount of the loan, and notes made by the corporation, and signed by its five stockholders as indorsers. The plaintiff surrendered the warehouse receipt to the corporation, and on its failure to repay the loan, sued two of the stockholders on the notes. *Held*, that the defendants are liable. *Mercantile Trust Co.* v. *Donk*, 178 S. W. 113 (Mo.).

For a discussion of these cases, see NOTES, p. 314.

TAXATION — JOINT STOCK COMPANIES — LIABILITY UNDER FEDERAL CORPORATION TAX. — The plaintiff brings suit as president of the United States Express Company, a joint stock company of New York, to recover money paid as taxes under the Federal Corporation Tax Law which provides that "every corporation . . . joint stock company or association, organized

for profit and having a capital stock represented by shares . . . now or hereafter organized under the laws of the United States or of any state or territory of the United States" shall be subject to the tax. *Held*, that the Express Company was properly taxed. *Roberts* v. *Anderson*, 226 Fed. 7 (C. C. A., 2nd Circ.).

It seems clear that a joint stock company may be taxed under the statute if otherwise within its terms. See *Flint* v. *Stone Tracy Co.* (*The Corporation Tax Cases*), 220 U. S. 107, 145, 162; *Eliot* v. *Freeman*, 220 U. S. 178, 185. The question then remains whether the United States Express Company is organized under the laws of New York within the meaning of the act. Now it is clear that a joint stock company possessing only common-law powers is not organized under the laws of a state. *Eliot* v. *Freeman*, *supra*. But a New York joint stock company possesses in substance all corporate attributes save that of limited liability. See *Hibbs* v. *Brown*, 190 N. Y. 167, 177, 82 N. E. 1108, 1111; *People* v. *Wemple*, 117 N. Y. 136, 144, 22 N. E. 1046, 1047. And at least the power to sue and be sued in the name of one of the members is statutory and distinctively corporate. *Cf. Hybart* v. *Parker*, 4 C. B. N. S. 209, with *Van Aernam* v. *Bleistein*, 102 N. Y. 355, 7 N. E. 537. See 2 COOK, CORPORATIONS, 7 ed., §§ 503, 508. Since the company thus does business in a corporate capacity by reason of powers which it takes from New York laws, it would seem to follow that it is organized under those laws within the meaning of the act, and so is subject to the tax. *People* v. *Wemple*, *supra*. *Cf. Oliver* v. *Liverpool Ins. Co.*, 100 Mass. 531; *Liverpool Ins. Co.* v. *Massachusetts*, 10 Wall. (U. S.) 566.

TAXATION — PARTICULAR FORMS OF TAXATION — INHERITANCE TAX: TAXATION OF FOREIGN REAL ESTATE EQUITABLY CONVERTED. — A testator domiciled in Illinois left realty in Illinois and in Ohio. He directed that all his property be sold and the proceeds distributed among legatees, some of whom were residents of Ohio. He appointed a resident of Ohio one of his executors, who took out ancillary administration there, and distributed the proceeds of the sale of the Ohio land among the legatees resident in Ohio. Illinois seeks to collect from the Illinois executor a tax on the succession to this property. *Held*, that it may not do so. *People* v. *Kellogg*, 109 N. E. 304 (Ill.).

A state cannot impose a tax upon the succession to real estate outside its territory. *In re Swift*, 137 N. Y. 77, 32 N. E. 1096; *Bittinger's Appeal*, 129 Pa. St. 338, 18 Atl. 132. But it is universally held that succession to personalty, no matter where it is located, may be taxed at the domicile of the descendent, because the state of actual *situs* of the property permits the law of the domicile to govern its descent and distribution. *In re Swift*, *supra*; *Frothingham* v. *Shaw*, 175 Mass. 59, 55 N. E. 623. See DOS PASSOS, INHERITANCE TAX LAW, 2 ed., § 46. This same situation exists in the case of equitable conversion, for though the state of the *situs* governs the descent of the legal title by its own law, it permits the law of the domicile to determine the succession to the proceeds. *In re Piercy*, [1895] 1 Ch. 83; *Jenkins* v. *Guarantee Trust, etc. Co.*, 53 N. J. Eq. 194, 32 Atl. 208. It would seem, then, that the state of the domicile has power to tax succession to the proceeds in such a case, as in any case of succession to personal property, but outside of Pennsylvania no attempt to levy such a tax has been made. *Connell* v. *Crosby*, 210 Ill. 380, 71 N. E. 350; *In re Swift*, *supra*, 88. See *McCurdy* v. *McCurdy*, 197 Mass. 248, 250, 83 N. E. 881, 882. In the Pennsylvania cases, the property was actually brought into the state of the domicile for the purpose of distribution and this limit to the broad doctrine as there expounded has been suggested. *Miller* v. *Commonwealth*, 111 Pa. St. 321, 2 Atl. 492; *Williamson's Estate*, 153 Pa. St. 508, 26 Atl. 246; *Dalrymple's Estate*, 215 Pa. St. 367, 64 Atl. 554. See *Hale's Estate*, 161 Pa. St. 181, 183, 28 Atl. 1071, 1072. The